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House of Representatives

The House was not in session today. Its next meeting will be held on Monday, May 1, 1995, at 12:30 p.m.

Senate

WEDNESDAY, APRIL 26, 1995

(Legislative day of Monday, April 24, 1995)

The Senate met at 10:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. Our prayer this morning will be delivered by the Reverend Dr. T. Warren Moorhead, of the First Baptist Church of Trion, GA.

PRAYER

The guest Chaplain, the Reverend Dr. T. Warren Moorhead, offered the following prayer:

May we pray:

Holy God, You are almighty, You alone are holy. As Lord of the universe, Sovereign Ruler of nations and men, and Holy Redeemer of the unborn, the living, and the dead, we join this Senate today confessing our unworthiness in Your presence. You are total love. Through the example of Your son, You taught us to love one another and to reach out to our neighbor, as well as our enemy. But too often we have been consumed by our own selfish concerns. Why must it take, O God, a tragedy as occurred last week to shock our Nation into realizing the potential evil inherent in every man's heart and our ultimate hopelessness without the manifestation of Your love in each of us through Your son, Jesus Christ.

You are God and we are but persons of clay. We begin this congressional day by acknowledging Your power and requesting Your guidance in all deliberations. Holy Father, give the Members of this body not only the wisdom to know right but also the courage to

do what is right. The Members of this Chamber are accountable to the people of these United States but ultimately to You. Psalms 72 reminds us that You, God, give rulers Your justice that they may judge Your people with righteousness, Your poor with compassion, that they may defend the cause of the destitute, give deliverance to the needy, and crush the oppressor. Lord, may You give to the esteemed men and women of this sacred Chamber the willingness to cooperate with You in promoting justice and righteousness, establishing peace and tranquility across our troubled land. May we strive for the day when peace covers the Earth as water covers the sea.

Holy God, today, great pressures will be brought to bear on the men and women of this room. Remind them now that You allowed the people to elect them because of their inner strengths that will protect them from outside pressures. May the words of their mouths, the meditations of their hearts, and the actions of their hands be acceptable in Your sight this day. In Jesus' name I ask this. Amen.

The PRESIDENT pro tempore. The distinguished Senator from Georgia is recognized.

Mr. COVERDELL. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SANTORUM). Without objection, it is so ordered.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, leadership time is reserved.

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 956, which the clerk will report.

The bill clerk read as follows:

A bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes.

Pending:

(1) Gorton amendment No. 596, in the nature of a substitute.

(2) Abraham amendment No. 597 (to amendment No. 596) to provide for equity in legal fees.

(3) Hollings amendment No. 598 (to amendment No. 597) to establish a limitation on attorneys' fees in all civil actions to \$50 per hour.

(4) Gorton (for Brown) amendment No. 599 (to amendment No. 596) to restore to rule 11 of the Federal Rules of Civil Procedure the restrictions on frivolous legal actions that existed prior to 1994.

The Senate resumed consideration of the bill.

Mr. GORTON. Mr. President, is there a pending amendment?

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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The PRESIDING OFFICER. The pending amendment is amendment No. 599 offered by the Senator from Washington on behalf of the Senator from Colorado.

Mr. GORTON. Mr. President, we are engaged in the debate over the public liability bill. The pending business is an amendment basically sponsored by the Senator from Colorado [Mr. BROWN], having to do with rule 11 of the Federal Rules of Civil Procedure.

There will be no votes until at least 6 o'clock this evening, at which time there will be votes both on an amendment by the Senator from Michigan [Mr. ABRAHAM], and a second-degree amendment to that amendment sponsored by the Senator from South Carolina [Mr. HOLLINGS].

As a consequence, there are essentially three amendments to the basic product liability bill before the Senate at this point. It is appropriate to debate each one of them.

In addition, I wish all Senators and their staffs who are listening to this debate to understand that while many Members of the Senate are in Mississippi for the funeral of our former colleague, Senator Stennis, it is appropriate at any time during the day to come and speak to any potential future amendment to this bill. We know that it is controversial. We know that there will be amendments to narrow the bill. We know that there will be amendments to broaden the bill. Anything that Members can do to discuss some of their proposals or their general attitudes on the bill itself during the course of the day will be appreciated.

How long this evening the majority leader will wish to keep us in session I do not know. But I do know that we will vote on the Hollings second-degree amendment and the Abraham first-degree amendment at approximately 6 o'clock. I know that the majority leader hopes thereafter to deal with the Brown amendment by vote today.

After that, under the order, the majority leader himself will present an amendment broadening the scope of the bill as it respects punitive damages. That will be a major amendment to the bill, and it is perfectly appropriate for people to express their views on that subject at any time during the day, even before the amendment itself is adopted.

Simply to summarize, this is the first time that the Senate has actually dealt with amendments, engaged in a formal debate on the subject of product liability or, more broadly, tort reform. In spite of the fact that there have been product liability bills introduced and sometimes reported by the Commerce Committee, at least since 1982, and perhaps earlier than that, the bill, in my view and that of my colleague, the Senator from West Virginia [Mr. ROCKEFELLER], is a balanced approach, balancing the interest of judgment and the prosecution of claims and product liability cases against the undoubted negative impact of product liability

litigation on the creation of jobs, on American competitiveness, on the research and development of new products, of the marketing of valid products.

The impact of product liability litigation on the marketplace has been distinctly negative. It has dramatically reduced the number of producers of many important medicines, of commodities like football helmets, for example—almost anything that is ever associated with dangerous kinds of activities. We hope not to restrict the access to the courts on the part of people who are injured by the genuine negligence of manufacturers but to see to it that there is a balance in that litigation, a balance which more greatly encourages economic development in this country and encourages fairness by not subjecting manufacturers or wholesalers or retailers to litigation over matters which are not their fault or which subjects them to charges beyond their fault in the case of any such accident.

Mr. President, I spoke in general terms the day before yesterday, when this debate began, to the proposition that we now had precise information as to the impact of product liability legislation and did not have to deal with this question entirely in the abstract.

In spite of my statement just a few moments ago, there has, in fact, been action by this Congress on one very narrow, focused field of product liability in one very narrowly focused area.

For almost a decade, our colleague, the Senator from Kansas [Mrs. KASSEBAUM] has attempted to get relief for the manufacturers of small aircraft. Finally, last year, this Congress passed, with respect to small aircraft, one aspect of this product liability legislation: simply a statute of repose, an 18-year statute of repose, which frustrated lawsuits against the manufacturer with respect to aircraft more than 18 years in age.

The fact of so much product liability litigation against those aircraft manufacturers had reduced the production of private aircraft in the United States by companies like Piper and Cessna by some 95 percent over a period of about 20 or 30 years—95 percent, Mr. President.

For all practical purposes, that business was defunct in the United States of America, not only, of course, harming the companies, their employees, and their past employees, but limiting the availability of such aircraft to those who wished to purchase them and to fly them.

The mere passage into law 1 year ago of a statute of repose for that type of aircraft has already had a remarkably positive impact.

Quoting from testimony by the president of the General Aviation Manufacturers Association on this bill, the bill that is before us right now:

After stopping the production of piston engine aircraft in 1986 because of spiraling liability costs, Cessna Aircraft recently an-

nounced construction of a new production facility for piston-powered airplanes in Independence, Kansas. Cessna plans to build 2,000 planes per year at the new facility and create over 1,500 new jobs. This will generate thousands of additional jobs among suppliers and vendors in Kansas and throughout the United States.

Piper Aircraft, which was forced into bankruptcy in 1991 largely due to the costs of product liability suits and the threat of future litigation, is now planning to emerge from bankruptcy in the near future. Piper has increased both its employment and production schedules by thirty percent.

There is further testimony on Mooney Aircraft in Kerrville, TX.

But, Mr. President, if a modest statute of repose of that nature in one industry, albeit one graphically impacted by product liability litigation, can have such an immense recovery, benefiting, obviously, not only itself, its employees, and its suppliers, but obviously the people, the market out there for these aircraft, how much greater impact—100 times greater, or 1,000 times greater, we do not know—can general, fair, and balanced product liability legislation have in the United States of America, legislation that includes a statute of repose slightly longer, a statute of repose of 20 years, but one which also limits the arbitrary nature of punitive damage awards, one of the greatest fears of all manufacturers, but particularly small manufacturers, in the United States.

One such manufacturer who testified before the Commerce Committee shrugged his shoulders and said: "A single such lawsuit could drive me out of business and destroy the work of an entire lifetime, whether I really had a major responsibility or not." Not only because of the unlimited nature of potential punitive damage awards but because of the doctrine of joint liability under which, when there is more than one defendant, one, the deep pocket, can have imposed on it the entire judgment, even though the responsibility of that defendant was, say, only on the order of some 10 percent.

So reforms in joint liability, reforms in punitive damages, reforms by reason of a statute of repose, the removal of responsibility from a wholesaler for judgments against the manufacturer, each of these is an important step forward, which not only does not undercut justice but advances the cause of justice. At the same time, reforms can have an impact, perhaps not as dramatic as these to which I have spoken in private business driven aircraft, but across our entire economy vitally important and positive.

This, Mr. President, is an important bill. The general subject of legal reform beyond this is important, as well. Just yesterday afternoon, the Senate Labor Committee reported a bill similar to this on the subject of medical malpractice, a vitally important element in any health care reform, in the view of this Senator.

So I hope that, certainly by sometime next week, we will be able to

bring this bill in its then form to some final vote. But, in order to do so, we need the cooperation of Members. We need them to appear. We need them to speak to their amendments or speak to the bill, to let their views be known, to carry on the debate in the better traditions of the Senate.

So, Mr. President, I summarize by saying we are open and ready for business and any Member who wishes to do business will be welcome through the door.

With that, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KOHL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KOHL. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator is recognized.

TRIBUTE TO SENATOR DAVID PRYOR

Mr. KOHL. Mr. President, I come to the floor today for just a few moments to express my admiration and appreciation and my respect for DAVID PRYOR, our colleague, who has announced that he will not be running for reelection next year.

For those of us in Washington and, of course, for those people in public life all over the country, we meet all manner of different human beings, both in terms of the constituents that we meet and, of course, the colleagues with whom we work. While none are bad, some are different from others and some are better and some are best. And in the category of best, I would put DAVID PRYOR, the best kind of a human being, the best kind of a friend, the best kind of a public representative.

The people in Arkansas know very well what an outstanding person DAVID PRYOR is and what a great public servant DAVID PRYOR has been. He is beloved by virtually everybody in Arkansas to the extent that when he ran for reelection last time, he had no opposition, and had he run for reelection in 1996, it is undoubtedly true that he would have received an enormous majority of the votes cast in that election.

So DAVID PRYOR's record of accomplishment and achievement, the esteem in which he is held by people in Arkansas, is well known. Those of us here who have worked with him in the Senate are equally well aware of what it is that DAVID PRYOR has accomplished and what kind of a person he is. In my judgment, DAVID PRYOR is the best kind of a public servant, the best kind of a Senator, for many reasons, chief among which, in my judgment, is

the fact that he is a person who can and does work with all of his colleagues, regardless of which side of the aisle they happen to occupy. I believe that is an enormous virtue in a public servant, and that it is invaluable in the Senate where, in order to get things done in a constructive fashion, in order to keep the place working, people have to have a willingness and an ability to compromise their differences in order to get things passed, in order to keep legislation moving and, more importantly perhaps, in order to assure the people that we represent all over the country that this is an institution that can work.

DAVID PRYOR understands that as well as anybody I have met in my now 6 years here in the Senate. He practices that. Although we Democrats, of course, know how comfortable and how easy it is to work with him, I know it is equally true that Republicans recognize in DAVID PRYOR a person who, more than anything else, wants to get things done and in no way, ever, is interested in just impeding the work of the Senate.

So he is an outstanding person. Personally, DAVID PRYOR, when I came here 6 years ago, befriended me immediately. He went out of his way, recognizing that I was new to the process, and he went out of his way to see to it that I got along here and got to know my colleagues, got to know a little bit about how the Senate works, and in every way and at every turn, when I ran up against an obstacle or had a problem I did not know how to deal with, I felt comfortable talking to him. He was always receptive and always willing to put aside whatever it was he was occupied with in order to take care of my needs and to help ensure that I became a working Member of this body.

So DAVID PRYOR has been not only a great Senator but he has been a wonderful human being. I think that we can celebrate what he has accomplished in his career here in the Senate and celebrate it in a way which really does not, in any way, suggest that his career is over. He is not running for reelection in 1996. He says he wants to return to the private sector. Whatever he does, he is going to be good and effective at it. He is a person of public service, and his career in politics may go on at another time in another place and in another job. If it does, we will all be very well served.

So DAVID PRYOR, we love you and we respect you. We have great regard for what you have accomplished here among us, and we wish you well during these next 18 months when you will continue to serve with us. We certainly wish you, Barbara, and your family continued good health and happiness as you wend your way along the path of life.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SIMON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. INHOFE). Without objection, it is so ordered.

Mr. SIMON. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATOR DAVID PRYOR

Mr. SIMON. Mr. President, I happened to turn my television set on in my room and caught Senator KOHL making his brief remarks about our colleague, Senator PRYOR. It occurred to me that I should come over here and just say a few things also, about DAVID PRYOR, who has announced that he is not going to be running for reelection.

I can remember when I was in the House and I heard DAVID PRYOR speak to a breakfast meeting. I had known him just to say hello, but I was very favorably impressed and I have been favorably impressed through the years.

Two things I think of specifically in connection with our colleague, Senator PRYOR. One is the Taxpayer Bill of Rights. The Internal Revenue Service does excellent work, but whenever you have human beings, occasionally there are those who abuse their privileges and that is true in any organization—the U.S. Senate, the Internal Revenue Service. So DAVID PRYOR introduced his Taxpayer Bill of Rights, which gives the ordinary taxpayer, who may be abused, or feels he or she is abused by the IRS, an option and an ombudsman who can say: Let us take a look at whether we are doing the right thing.

The second thing I can remember is DAVE PRYOR standing here on the floor and going through an amazing list of consultants being hired by virtually every agency of Government. It was an astounding accumulation. I do not remember what the figure was, but it was absolutely astounding. I remember then the next appropriations, and the next budget, we whacked away at that. It may very well be creeping back up again, I do not know, but it is one of those areas that is very easily abused by Government. We hire consultants for everything from the Department of Energy, Department of Defense, foreign aid—whatever it is, we hire consultants.

I also think of DAVE PRYOR as someone who is genuinely interested in the well-being of our country. Yes, he is a partisan as we all are partisans, but frequently this body gets too partisan. I hear it in our Democratic caucuses. I am sure my colleague hears it from Republican caucuses. He has not invited me to any of his Republican caucuses, but I am sure he hears the same. And I think one of the things the public wants from us is that we say, "What is